

02.03.2022

COURT : 01
ITEM : 06
MATTER : 439
STATUS : REJECTED
TRANSCRIBER : nandy

CIRCUIT BENCH OF CALCUTTA HIGH COURT AT JALPAIGURI

CRM (NDPS) 16 of 2022

In Re:- An application for **bail** under section **439** of the Code of Criminal Procedure filed on January 1, 2022 in connection with Sahebganj Police Station Case No. 517 of 2021 dated 19.10.2021 under Sections 20(C) of the Narcotic Drugs and Psychotropic Substances Act. (NDPS Case No. 123 of 2021)

And

In the matter of: **Asidul Sekh**

...Petitioners

Mr. Subhasish Mishra, Advocate

...for the Petitioners

Mr. Nilay Chakraborty, Advocate

Mr. Biswarup Roy, Advocate

...for the State

The petitioner is seeking bail in connection with Sahebganj Police Station Case No. 517 of 2021 dated 19.10.2021 under Sections 20(C) of the Narcotic Drugs and Psychotropic Substances Act.

A serious exception is taken by the learned Advocate of the petitioner on the modalities of the seizure, effected by the BSF personnel when the petitioner was intercepted. According to him, at the first attempt there was no recovery of the contraband articles which was subsequently shown in the second seizure list and in view of such inconsistency and discrepancy, the petitioner who is languishing in jail since last 130 days, should be released on bail.

The learned lawyer of the State opposes the prayer for bail. According to him the first attempt was made to search the body of the person and subsequently the contraband, above the commercial quantity, was recovered from plastic basin which the

petitioner was carrying. He thus submits that seizure lists are not two but, in fact, it was shown as seizure of the body of the person as to what articles he was carrying.

Indubitably, the petitioner has been apprehended showing the alleged possession of the contraband above the commercial quantity. The question of discrepancy and/or inconsistency, if there be any, pertaining to the seizure is basically a matter of trial and whatever be the point, can be agitated by way of defence as available to the petitioner.

Since commercial quantity of contraband was allegedly recovered from the possession of the petitioner, the bar created under Section 37 of the NDPS Act is attracted. We do not find any ground for taking exception to the same.

Accordingly, the prayer for bail is **rejected**.

The application being **CRM (NDPS) 16 of 2022** is **dismissed** at this stage.

(Harish Tandon, J)

(Rabindranath Samanta, J)